TO: Mayor and City Council Members
FROM: The Environmental Sustainability Committee (ESC)
SUBJECT: CIP Consideration of Stormwater Management in the Accotink Watershed

The purpose of this correspondence is to advocate that the City of Fairfax continue its study and analysis of the Accotink Creek system with a view to significantly reducing sedimentation and nutrient transport in the watershed. The ESC is making this intervention because its members believe there is an apparent misunderstanding concerning the impact of a January 3, 2013 decision by the U.S. Eastern District Court for Virginia during ongoing city discussions of the 2014 Capital Improvements Program (CIP).

This federal court order remanded an Environmental Protection Agency (EPA) published Total Maximum Daily Load (TMDL) directive for the Accotink Creek to that agency for revision in conformance with the court's decision. In its decision, the court determined that the use of a non-pollutant surrogate (in this case water flow rate) was beyond EPA's statutory authority under the Clean Water Act (CWA) to define a pollutant (in this case sediment). EPA can appeal this district court decision, or alternatively, revise the Accotink TMDL under normal federal administrative procedures to direct reduction of specific pollutants in accordance with its existing CWA authority. Either process will delay the outcome by several months.

The ESC would like to emphasize that the court's determination is a narrow decision that does not change the fact that all MS4 stormwater permit holders along the Accotink Creek will be obligated to reduce the sediment and associated nutrients of phosphorous and nitrogen in this watershed. The methodology was disallowed, not the objective of the TMDL. Although experts generally agree that the velocity of storm water flow increases the erosion within streambeds and results in greater sedimentation, the court decision disallowed the use of flow rate as a legitimate surrogate unit of measurement method for measuring the quantity of pollutants reaching the stream and required the pollutant "sediment" to be named and quantified in a TMDL. The court's decision will result in a delay of that requirement, but does not eliminate the need to reduce sediment or the associated problematic nutrients in the Accotink Creek.

It is also important to note that the Accotink TMDL is only one of two parallel TMDLs affecting Fairfax City. The Chesapeake Bay TMDL also requires significant reductions of sediment and nutrients throughout the Chesapeake Bay coastal watershed, but does not use the flow rate methodology disallowed by the court. The city's July 2013 renewed MS4 stormwater permit will require reductions of these pollutants and the city will also be

required to meet a series of new obligations under the revised Virginia Storm Water Management Program (VSWMP) that will come into force beginning July 2014.

All this leads the ESC to recommend that the Accotink Creek project not be "deleted" from the city's five-year CIP baseline projects. The City Council may find it appropriate, based on technical recommendations of the city staff, to delay or adjust the dollar amounts for future years based on the future of the Accotink TMDL, should it be revised or appealed, and the more immediate demands of the Chesapeake TMDL and VSWMP.

The ESC has made a number of procedural recommendations regarding the city storm water system in the past, and we continue to believe those are appropriate and necessary. Fairfax City, similar to other jurisdictions, has built its storm water sewer system around using its streams as the repository of that system. Over the years, the city has increased its relatively dense residential development and expanded the total area of impervious surfaces, increasing the amount and velocity of storm water drainage, and continually increasing the pressure on and degradation of the associated watersheds.

We should not delay the iterative steps we must begin to take to mitigate our storm water problems. The city staff has taken a number of steps that move us toward this goal, and have done well in preparing the city to meet its new regulatory and permit obligations. They have also been conscientious in trying to keep up with the maintenance of our aging stormwater infrastructure and solving specific area drainage problems in Old Town and several neighborhoods. However, the ESC has serious concerns with our ability to adequately fund these existing problems and simultaneously look ahead to prioritizing and funding the additional Best Management Projects (BMPs) necessary to address future requirements. We recommend those BMPs should include (but certainly not limited to):

- **The reduction of sedimentation and nutrient runoff in the design and construction of our maintenance and drainage projects.** This should include reduction of velocity of flow to reduce erosion, and facilities for temporary retention of volume of storm water released to the Accotink Creek. This may add near term cost to these projects, but save us future expense as significant reduction requirements are mandated for the city.

- **An aggressive and expansive public outreach and public participation effort that will involve the city's residents and businesses in shaping future storm water management efforts.** The objectives should be to obtain citizen input and consensus on necessary city actions and expenditures, individual activities that can be taken on private properties to reduce or slow storm water runoff (e.g., rain gardens, rain barrels, permeable sidewalks and driveways), and preventative measures that improve storm water quality such as lawn fertilizer reduction, or pet waste disposal, The city already has the backbone ingredient of an involved citizenry, proud of its city and its heritage. Our new stormwater MS4 permit and the VSWM Program will require outreach efforts, but there is no need to delay these local initiatives.

The bottom line is that there is too much stormwater, it is flowing too fast, and it is too dirty. The City of Fairfax is home to the headwaters of the Accotink Creek, a major regional watershed, and has a history of actively working to restore our part of the Accotink Creek. The ESC appreciates the time and effort that the City Council, the Planning Commission, and City staff have devoted to exploring the needs and options available to address the city's continuing storm water problems. These are issues that have developed gradually over many years, but whose impact is increasingly severe. The ESC has the responsibility to share the results of our analysis of these problems and offer advice from our independent viewpoint. We have been deeply concerned with these issues since the formation of the committee and are convinced the damage and impact of stormwater will continue to get worse if the city stays on the path of business as usual.

Respectfully submitted by the Environmental Sustainability Committee, February 15, 2013.